No. 85-546

In the Supreme Court of the United States

OCTOBER TERM, 1985

UNITED STATES OF AMERICA, PETITIONER

v.

FLORENCE BLACKETTER MOTTAZ, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether either the twelve-year statute of limitations under the Quiet Title Act, 28 U.S.C. 2409a(f), or the six-year statute of limitations in 28 U.S.C. 2401(a) applicable to suits against the United States generally, bars this suit brought by an heir of an Indian allottee against the United States to recover land to which the United States acquired title in an allegedly unlawful transaction 27 years earlier, or to recover money damages in the amount of the current fair market value of the land.

PARTIES TO THE PROCEEDING

The only parties to the proceeding are those listed in the caption. Respondent sought to represent a class of all similarly situated Indians residing in the United States (J.A. 9-10). However, the district court dismissed the suit on statute of limitations grounds, and it therefore did not certify a class.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 753 F.2d 71, and the memorandum order of the district court (Pet. App. 9a-11a) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 12a) was entered on January 18, 1985, and a petition for rehearing was denied on April 29, 1985 (Pet. App. 13a). On July 22, 1985, Justice Blackmun extended the time within which to file a petition for a writ of certiorari to and including September 26, 1985. The petition was filed on that date, and was granted on November 18, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

25 U.S.C. 345 and 483, and 28 U.S.C. 1353, 2401, 2501 and 2409a, are reproduced in relevant part at App., *infra*, 1a-4a.

STATEMENT

1. On December 5, 1905, three Chippewa Indian ancestors of respondent Mottaz received allotments of land on the Leech Lake Reservation in Cass County, Minnesota, pursuant to the General Allotment Act of February 8, 1887, 25 U.S.C. 331 *et seq.*, and the Nelson Act of January 14, 1889, ch. 24, 25 Stat. 642 *et seq.* The allotments were held in trust by the United States for periods that eventually were extended indefinitely by Section 2 of the Indian Reorganization Act of 1934, 25 U.S.C. 462. Respondent inherited a one-fifth interest in one of the allotments and a one-thirtieth interest in each of the other two (Pet. App. 2a).

Under 25 U.S.C. 483, the Secretary of the Interior "is authorized in his discretion, and upon application of the Indian owners, to issue patents in fee, to remove restrictions against alienation, and to approve conveyances, with respect to lands or interests in lands held by individual Indians." In the early 1950s, some of the individuals who also owned fractional interests in the three allotments at issue in this case requested the Department of the Interior to sell the allotments. Pet. App. 2a. In May 1953, the Department's Office of Indian Affairs sent letters to respondent pertaining to each of these allotments, which read in part (*ibid.* (emphasis added)):

> Some of the owners have requested the sale of this land. We have appraised both land and timber, if any, and as soon as we get the consent to sell, an effort will be made to obtain a buyer by advertising for sale bids. This land will not be sold unless the high bid is equal to, or more than, the appraisal value. *If no reply is received from you within ten (10) days, it will be assumed that you have no objection to the sale.*

Respondent did not object to the sale of the allotments (Pet. App. 9a), although she also did not sign and return to the Office of Indian Affairs a form stating that she expressly consented to the sales (*id* at 3a).[1] The Interior Department accepted bids for the allotments, and in 1954, each allotment was sold to the United States Forest Service.[2] The tracts now are included in the Chippewa National Forest (*ibid.*).

In 1967, respondent visited the Bureau of Indian Affairs (BIA) and expressed a desire to sell all of her inherited land. In its written response to that visit, BIA identified the interests in allotments that respondent then held. BIA's response did not mention any interest in the three allotments at issue here. DX A8 (J.A. 17). In response to another inquiry in 1981, BIA again provided respondent with a list of all her current interests in allotments. BIA also stated that respondent once had held interests in the three allotments that were sold to the Forest Service in 1954. However, it informed her that those interests had been identified by BIA as so-called "Secretarial Transfer" cases, which referred to transactions in which not all of the heirs had consented to the conveyance of their interests in a particular allotment. PX 5 (J.A. 44-45). Respondent's interests apparently were so designated pursuant to a project the BIA had instituted in the late 1970s in order to

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[1] Some of the other owners of fractional interests in the allotments did give their express consent to the sales (Pet. App. 3a; see J.A. 13).

[2] Apparently the normal procedure was to distribute the proceeds of such a sale to the heirs who owned interests in the allotment (Pet. App. 9a)—unless, perhaps, there were claims against the allottee or previous beneficial owners to be settled out of the proceeds (J.A. 35). There is no allegation in the complaint in this case that such a distribution did not occur with respect to the three allotments at issue.

identify potential claims that might be affected by the statute of limitations in 28 U.S.C. 2415, a provision applicable, inter alia, to trespass damage actions brought by the United States on behalf of Indians. Pet. App. 3a. See generally *County of Oneida* v. *Oneida Indian Nation* (*Oneida II*), No. 83-1065 (Mar. 4, 1985), slip op. 14-16.[3]

[3] 28 U.S.C. 2415, which was originally enacted in 1966 (Act of July 18, 1966, Pub. L. No. 89-505, 80 Stat. 304 *et seq.*), imposes a statute of limitations on various actions brought by the United States generally, including those brought on behalf of Indians. Section 2415 originally imposed a six-year limitation on the United States' bringing of contract claims, a three-year limitation on tort claims, and a six-year limitation on trespass actions and certain other claims. Prior to 1982, the statute had been amended on a number of occasions to extend the limitations period for damage actions based on pre-1966 transactions affecting Indian lands. Act of July 18, 1972, Pub. L. No. 92-353, 86 Stat. 499 *et seq.*; Act of Aug. 15, 1977, Pub. L. No. 95-103, 91 Stat. 842 *et seq.*; Act of Mar. 27, 1980, Pub. L. No. 96-217, 94 Stat. 126 *et seq.*

In connection with the 1982 amendments to 28 U.S.C. 2415, the Secretary was required to prepare a list of Indian claims accruing prior to July 18, 1966, that were subject to the statute of limitations. Those claims that were listed are not barred by 28 U.S.C. 2415; those that were not listed became time-barred upon the passage of 60 days after the publication of the final list. Indian Claims Limitations Act of 1982, Pub. L. No. 97-394, 96 Stat. 1976 *et seq.*, 28 U.S.C. 2415 note. See *Oneida II*, slip op. 15. The legislative history of the 1982 amendments describes "Secretarial transfer" cases as trespass claims that resulted from the Secretary's sale of trust land in heirship status without the consent of all of the heirs. See H.R. Rep. 97-954, 97th Cong., 2d Sess. 7 (1982).

The three allotments on the Leech Lake Reservation in which respondent formerly owned an interest (Nos. 855, 856 and 857 (J.A. 7-8, 13)) are included on this list of claims prepared pursuant to the 1982 Act. 48 Fed. Reg. 13846 (1983). Although respondent's claims therefore are not barred by 28 U.S.C. 2415 and the Indian Claims Limitations Act of 1982 insofar as they might lie against anyone other than the United States as a result of the allegedly unlawful sale of her interests, her claims against the United States are not covered by those provisions. The latter claims instead are subject to the statutes of limitations in 28 U.S.C. 2401(a) and 2409a(f) that are applicable to suits against the United States. See Pet. App. 10a-11a.

2. On December 30, 1981, respondent filed this action in the United States District Court for the District of Minnesota (J.A. 1, 7-11). She alleged, inter alia, that the sales of the three allotments were made without her consent or permission and were, for that reason, "illegal and void" (J.A. 8); that the United States and its agents breached their fiduciary duties and were negligent in selling the land without obtaining her consent (J.A. 10); and that her property was taken for a public use without just compensation, in violation of the Fifth Amendment (J.A. 10). As relief, respondent sought damages in the amount of the current fair market value of each parcel or, in the alternative, rescission of the sales, with title to the allotments to revest in respondent and other descendents, heirs, and assigns of the original allottees (*ibid.*; Pet. App. 3a-4a).[4] Following a pretrial hearing on June 6, 1982, respondent dismissed without prejudice her demand for rescission of the sales and revesting of title in respondent and others (J.A. 12), leaving only her demand for damages (Pet. App. 4a).

On October 7, 1983, the district court granted the United States' motion for summary judgment, holding that this suit is barred by the statute of limita-

[4] Respondent also sought to represent a class of Indian allottees (and their descendents, heirs and assigns) of land previously held in trust anywhere in the United States that was transferred by the United States without their consent (J.A. 9).

tions in 28 U.S.C. 2401(a) (Pet. App. 9a-11a). Section 2401(a) provides that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." In this case, the court held that respondent's cause of action first accrued when she learned of the sales of the allotments. The court found that "[t]he deposition of the [respondent] clearly reveals that she had knowledge of the sale in 1954," and it concluded on this basis that the suit is time-barred under 28 U.S.C. 2401(a) (Pet. App. 10a).

The district court also rejected respondent's argument that the statute of limitations in 28 U.S.C. 2415 for trespass damage actions relating to Indian lands (see pages 3-4 & note 3, *supra*) overrides the six-year statute of limitations in 28 U.S.C. 2401(a). The court reasoned that "28 U.S.C. § 2415 applies to actions brought *on behalf of* a recognized tribe or individual Indian," not "claims *against* the United States," which are governed by 28 U.S.C. 2401(a). Pet. App. 10a-11a (emphasis in original).

3. The court of appeals reversed and remanded (Pet. App. 1a-8a). The court of appeals acknowledged that respondent had voluntarily dismissed her complaint insofar as it sought rescission of the sales and the revesting of title in respondent and others (*id.* at 4a), and that she now only "seeks to obtain damages for the government's alleged negligence and breach of fiduciary duty" (*id.* at 6a). But the court did not read this partial dismissal to constitute an abandonment of what it took to be the "gist" of respondent's complaint: that "the sale of her land was illegal and void and did not transfer title" (*id.* at 4a). Instead, the court believed that "[respondent's] claim for damages in the amount of the fair market value of the land must be construed as equivalent to a

claim for return of the land itself" (*id.* at 6a). The court believed "as a matter of policy" that because the parcels are incorporated in an inaccessible national forest where they have little value to respondent, she "may force the government to pay her the fair market value of the land rather than to simply return the land itself" (*id.* at 6a-7a, 8a).

In its brief discussion of the statute of limitations issue (Pet. App. 4a-6a), the court of appeals relied primarily on this Court's decision in *Ewert* v. *Bluejacket*, 259 U.S. 129, 137 (1922). *Ewert* held that the state statute of limitations did not bar a suit by an Indian to recover land that was acquired by a non-Indian in violation of a federal statutory prohibition. The court of appeals acknowledged that the parties had not identified any case that considered whether *Ewert* also prevents the application to Indian land claims of federal statutes of limitations, such as the general statute of limitations in 28 U.S.C. 2401 for claims against the United States (Pet. App. 5a-6a). However, without discussion or citation to supporting authority, the court concluded that "Congress has not repudiated its policy of protecting Indian land by providing that claims against the United States for title to wrongfully alienated allotments are barred by a statute of limitations" (*id.* at 6a). Instead, the court read *Ewert* to stand for the proposition that if the underlying sale of land is void, "the concept that a cause of action 'accrues' at some point [for purposes of the statute of limitations in 28 U.S.C. 2401(a)] is inapplicable because the allottee simply retains title all along" (Pet. App. 6a).

In remanding the case for further proceedings (Pet. App. 7a-8a), the court held that respondent's failure to interpose an objection to the sale of the allotments in 1953 would not in itself constitute consent to the sale for purposes of 25 U.S.C. 483, but

that if respondent in fact received payment for her interests in the land in 1954, it "may be assumed that she consented to the sale and thus that she does not have a cause of action" (Pet. App. 7a). On the other hand, the court held that "[i]f the government did not pay [respondent], then it does not hold title to her allotments until she receives payment equal to the fair market value of the land" (*id.* at 7a-8a). The court acknowledged the government's argument that "the payment records may be difficult if not impossible to recover and that this is a good reason why a statute of limitations should bar [respondent's] claim" (*id.* at 7a n.8). Nevertheless, the court held that "[t]he government must bear the burden of proving that it paid [respondent] and therefore that it holds valid title to the [three] allotments" (*ibid.* (footnote omitted)).[5]

SUMMARY OF ARGUMENT

I.

The fundamental rule of sovereign immunity is that the United States cannot be sued without the consent of Congress. This rule applies to suits brought by Indians in the same manner as it applies to all others. When the legislation in which Congress consents to suit contains a statute of limitations, the limitations provision constitutes a condition on the waiver of

[5] The court left open for decision on remand the question whether 25 U.S.C. 483 prevented the Secretary from selling the allotments without respondent's consent (Pet. App. 7a). Although the court seemed to believe that this issue (and the question whether payment was made to respondent) bore on the application of the statute of limitations, they would appear to go to the merits of whether an unauthorized sale occurred in 1954 and whether the United States thereafter wrongfully withheld from respondent the proceeds of that sale.

sovereign immunity that must be strictly observed by the courts. Exceptions thereto are not to be implied. The court of appeals failed to respect these principles in this case.

II.

Although the court of appeals believed that respondent still is asserting a claim of title to the three parcels of land in question, it failed to consider the application of the Quiet Title Act (QTA) and the 12-year statute of limitations for QTA suits. See 28 U.S.C. 2409a(f). The court of appeals did acknowledge that under 28 U.S.C. 2401(a), other civil actions brought against the United States in district court are barred unless the complaint is filed within six years of the date on which the right of action first "accrues." But the court nevertheless held that this suit, filed 27 years after the sale of the parcels, is not barred by 28 U.S.C. 2401(a).

The court of appeals held that where a suit is brought by an Indian claiming that a prior sale of his land was void, the concept that the cause of action "accrues" at some point is inapplicable because the allottee retains title all along. The only authority the court of appeals cited for this novel proposition, *Ewert* v. *Bluejacket*, 259 U.S. 129, 137 (1922), lends it no support. The Court's holding in *Ewert* that the state statute of limitations did not bar the suit was based on the principle that under the Supremacy Clause, state-law time bars do not apply of their own force to Indian land title claims based on federal law. Moreover, the court of appeals' view that a cause of action based on a void transaction never "accrues" and therefore can never be time-barred is inconsistent with the function of a statute of limitations, which is to preclude a suit after passage of the specified period of time irrespective of the merits of the claim, and with the purpose of ensuring respose and

protecting the courts and defendants from the difficulties associated with the litigation of stale claims.

III.

Quite aside from the error in the court of appeals' rationale for avoiding the statute of limitations, this suit is barred irrespective of the manner in which it is characterized.

A. Although respondent voluntarily dismissed her demand for rescission of the 1954 sales and revesting of title in her, the court of appeals held that the gist of respondent's suit is that those sales were void and that she therefore retains title to her interests in the three parcels. For this reason, the court believed that her demand for a money judgment must be regarded as the equivalent of a demand for the return of the land itself. If the court of appeals is correct that respondent is disputing the United States' title to the three parcels, then this suit is governed by the QTA, because that Act is the exclusive means for adjudicating a disputed title to real property in which the United States claims an interest. *Block* v. *North Dakota*, 461 U.S. 273, 286 (1983). That the QTA is exclusive as regards suits brought by Indians is evident from the fact that although Congress fashioned an exception from the QTA for suits involving trust or restricted Indian lands—*i.e.*, for situations in which Indian interests are aligned with those of the United States as the defendant—Congress did not include any comparable exception for cases involving an Indian plaintiff. Moreover, although Congress granted the United States the option of retaining the property if it pays compensation to a prevailing QTA plaintiff, Congress did not grant the plaintiff a similar option to demand a money judgment in lieu of the return of the property, as the court of appeals permitted in this case.

Because jurisdiction over this suit lies exclusively under the QTA insofar as respondent disputes the United States' title, it is time-barred by 28 U.S.C. 2409a(f), which requires that a QTA suit be brought within 12 years of the date on which it accrued. This limitation applies to "[a]ny civil action" brought under the QTA and contains no exception for suits brought by Indians. Section 2409a(f) provides that a cause of action "shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." In this case, respondent knew of the sale of the property in 1954, far more than 12 years before this suit was filed, and her suit therefore is barred.

B. Respondent also has characterized her suit as one for money damages, based on an alleged breach of fiduciary duty by the United States in connection with the sale of her interests in 1954. Jurisdiction over such a suit would lie under the Tucker Act, 28 U.S.C. 1346(a)(2), but the district court now is barred from exercising that jurisdiction by the six-year statute of limitations in 28 U.S.C. 2401(a). With one exception not relevant here, Section 2401(a) applies to "every civil action" commenced against the United States in district court. The legislative history of the provision in 28 U.S.C. 1505 for Indian tribes to sue the United States, discussed by this Court in *United States* v. *Mitchell* (*Mitchell I*), 445 U.S. 535, 539 (1980), demonstrates that Congress intended Tucker Act suits brought by Indians to be subject to the same conditions to which such suits brought by other plaintiffs are subject, and the courts of appeals have not recognized any exception from the statute of limitations for Tucker Act suits brought by Indians.

C. Finally, respondent has characterized her suit as one for an allotment under 25 U.S.C. 345 and the

corresponding jurisdictional provision, 28 U.S.C. 1353. However, those provisions by their terms are limited to suits involving "the right of any person * * * to any allotment of land under any law or treaty"—*i.e.*, to suits for an "original allotment." F. Cohen, *Handbook of Federal Indian Law* 380 n.184 (1942). They do not authorize a suit to recover a parcel of land that previously was patented to an Indian in satisfaction of his right to an allotment and then later conveyed out of trust status.

This interpretation of the provisions now codified at 25 U.S.C. 345 and 28 U.S.C. 1353 is confirmed by the circumstances of the enactment of the former provision in 1894 and by the legislative history of each of four amending statutes enacted over the ensuing 17 years. This Court's decisions also make clear that these provisions "ha[ve] reference to original allotments claimed under some law or treaty, and not to disputes concerning the heirs of one who held a valid and unquestioned allotment" (*First Moon* v. *White Tail*, 270 U.S. 243, 245 (1926)), and that "Section 345 authorizes, and provides governmental consent for, only actions for allotment" (*Affiliated Ute Citizens* v. *United States*, 406 U.S. 128, 142 (1972)). Moreover, the QTA has now displaced any right of action that might once have been available under 25 U.S.C. 345 and 28 U.S.C. 1353 to contest the United States' title to formerly allotted land, and the Tucker Act is the exclusive jurisdictional basis for a damage action against the United States in connection with such land.

In any event, even if 25 U.S.C. 345 and 28 U.S.C. 1353 do confer jurisdiction on the district courts to entertain a suit such as this, respondent's suit nevertheless is barred by the six-year statute of limitations in 28 U.S.C. 2401(a), which applies to "every civil action" commenced against the United States in district court.

ARGUMENT

RESPONDENT'S SUIT AGAINST THE UNITED STATES BASED ON AN ALLEGEDLY ILLEGAL SALE OF HER UNDIVIDED FRACTIONAL INTERESTS IN THE ALLOTMENTS 27 YEARS BEFORE THIS SUIT WAS FILED IS BARRED BY THE STATUTE OF LIMITATIONS

I. ESTABLISHED PRINCIPLES OF SOVEREIGN IMMUNITY STRONGLY DISFAVOR IMPLIED EXCEPTIONS TO STATUTES OF LIMITATIONS THAT CONGRESS HAS IMPOSED AS CONDITIONS ON ITS CONSENT TO SUIT AGAINST THE UNITED STATES

Respondent knew in 1954 of the sale by the Secretary of her fractional interests in the three allotments, and the BIA's listing of her holdings in 1967 confirmed that the United States no longer held those interests in trust for her. The court of appeals nevertheless refused to find that this suit—which was filed in 1981, 27 years after the sale—is barred by the statute of limitations. This was error.

The principles that govern the statute of limitations issue in this case are firmly established. As the Court recently observed in another case involving a dispute over title to land, "[t]he basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of Congress." *Block* v. *North Dakota*, 461 U.S. 273, 287 (1983). The Court there reiterated the rule that even "[t]he States of the Union, like all other entities, are barred by federal sovereign immunity from suing the United States in the absence of an express waiver of this immunity by Congress." *Id.* at 280. This principle applies equally to suits by Indians. See, *e.g.*, *United States* v. *Mitchell*, 445 U.S. 535, 538 (1980).

"A necessary corollary of this rule is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied." *Block* v. *North Dakota*, 461 U.S. at 287. "When waiver legislation contains a statute of limitations, the limitations provision constitutes a condition on the waiver of sovereign immunity" (*ibid.*) and " 'defines th[e] court's jurisdiction to entertain the suit.' " *Lehman* v. *Nakshian*, 453 U.S. 156, 160 (1981), quoting *United States* v. *Testan*, 424 U.S. 392, 399 (1976), and *United States* v. *Sherwood*, 312 U.S. 584, 586 (1941). See *Munro* v. *United States*, 303 U.S. 36, 41 (1938); *Finn* v. *United States*, 123 U.S. 227, 233 (1887). See also *United States* v. *Mitchell*, 463 U.S. 206, 212 (1983). These principles weigh heavily against recognition of implied exceptions to the statute of limitations that Congress has imposed as a condition on its consent to suit against the United States. *Block* v. *North Dakota*, 461 U.S. at 287-288; *United States* v. *Kubrick*, 444 U.S. 111, 117-118 (1979); *Soriano* v. *United States*, 352 U.S. 270, 275-276 (1957); *Kendall* v. *United States*, 107 U.S. 123, 125-126 (1882).

In this case, respondent alleges that the sale of her interests in the former allotments to the Forest Service was void and that she therefore retains title to those interests, and she seeks a money judgment in the amount of the current fair market value of her interests in lieu of the return of the land itself. This suit therefore is barred either by the statute of limitations under the Quiet Title Act (QTA), 28 U.S.C. 2409a(f), insofar as respondent seeks to establish her title to the allotments, or by the statute of limitations in 28 U.S.C. 2401(a), which is applicable to other suits brought against the United States in district court. The former provision states that "[a]ny civil action" brought under the QTA to adjudicate a disputed title to real property in which the United States claims an interest shall be barred unless it is commenced within twelve years of the date upon which it "accrued." 28 U.S.C. 2409a(f). The latter provision states that "every civil action" commenced against the United States in district court shall be barred unless the complaint is filed within six years after the right of action first "accrues." 28 U.S.C. 2401(a).[6]

The conclusion that this suit is barred by one or both of these federal statutes of limitations is compelled, we submit, by *Block* v. *North Dakota*, 461 U.S. at 287-290. There it was held that the broad language in the QTA imposing a statute of limitations on "[a]ny civil action," and the policies of repose reflected in that provision, require the application of the statutory bar to a suit brought by a State in the same manner as it is applied to suits brought against the United States by other persons. The same reasoning requires the application of the statutes of limitations in the QTA and 28 U.S.C. 2401(a) to those civil actions against the United States that are brought by Indians.

The court of appeals failed to respect these principles that govern conditions on the waiver of sovereign immunity, including statutes of limitations. In fact, it did not even discuss those principles. Instead, relying solely on *Ewert* v. *Bluejacket*, 259 U.S. 129, 137 (1922), which held that a state statute of limitations did not bar a suit by an Indian against a pri-

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[6] Section 2401(a) contains an exception for suits covered by the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.* See 41 U.S.C. 607(g)(1)(A), 609(a)(3). That exception has no application here.

vate party, the court of appeals held that the federal statutes of limitations applicable to all civil actions against the United States imposes no bar to this suit. As we demonstrate in Point II, *infra*, the court of appeals' reliance on *Ewert* for this unprecedented holding is completely without merit.

The court of appeals compounded its error by its failure even to identify the particular statute that it believed gave Congress's consent to suit in this case, by its evident confusion regarding the relief respondent seeks, and by its misunderstanding of the effect the nature of that relief has on the determination of which statute of limitations applies. But as we demonstrate in Point III, *infra*, this suit is barred by the statute of limitations irrespective of how it is characterized—whether as (a) an action to quiet title to respondent's interests in the former allotments that were sold to the United States Forest Service in 1954, (b) an action to recover damages for the allegedly illegal sales, or (c) a suit for an allotment.

II. THE COURT OF APPEALS CLEARLY ERRED IN HOLDING THAT THIS COURT'S DECISION IN *EWERT* v. *BLUEJACKET* SUPPORTS THE CONCLUSION THAT RESPONDENT'S CAUSE OF ACTION HAS NOT "ACCRUED" FOR PURPOSES OF THE FEDERAL STATUTE OF LIMITATIONS BECAUSE THE UNDERLYING TRANSACTION ALLEGEDLY WAS VOID

Although the court of appeals characterized respondent's claim as one to establish her title to the former allotments, it did not even address the application of the QTA or the 12-year limitation on bringing an action under the QTA. See pages 21-27, *infra*. The court did acknowledge that, under 28 U.S.C. 2401(a), other civil actions brought against the United States in district court are barred unless the complaint is filed within six years of the date on

which the right of action first "accrues."[7] But it nevertheless held that 28 U.S.C. 2401(a) imposes no bar to this suit. In the court of appeals' view, in a suit brought by an Indian based on a land transaction that allegedly was void, "the concept that a cause of action 'accrues' at some point is inapplicable because the allottee simply retains title all along" (Pet. App. 6a). Respondent endorses that interpretation of 28 U.S.C. 2401(a), and she argues that the same interpretation should be given to the term "accrued" in 28 U.S.C. 2409a(f) if the Court holds that this suit must be brought under the QTA. See Br. in Opp. 15-16, 18.[8]

This novel rule, under which the application of the threshold bar to suit would turn on the merits of the plaintiff's claim, cannot be squared with the very premise of a statute of limitations, which is to preclude a suit after passage of the specified period of time irrespective of the merits of the underlying action. *Block* v. *North Dakota*, 461 U.S. at 291-292. The court of appeals' rule also is completely inconsistent with the purposes underlying such statutes of repose: "although affording plaintiffs what the legislature deems a reasonable time to present their claims, they protect defendants and the courts from having

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[7] The court did not indicate whether it regarded respondent's suit as one for money damages under the Tucker Act, 28 U.S.C. 1346(a)(2), or as a suit for an allotment under 25 U.S.C. 345 and 28 U.S.C. 1353. As we explain below (see pages 33-47, *infra*), the district court had no jurisdiction over this suit under the latter two provisions. But even if it did, this suit would be barred by the six-year statute of limitations in 28 U.S.C. 2401(a). See pages 47-49, *infra*.

[8] There is no reason to believe that the court of appeals would have reached a different conclusion with respect to the meaning of the term "accrued" in 28 U.S.C. 2409a(f) if it had addressed the question of the applicability of the QTA.

to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise." *United States* v. *Kubrick*, 444 U.S. 111, 117 (1979).[9] These purposes apply with full force where the plaintiff's claim is that the prior transaction by which the defendant purportedly acquired title is void. Cf. *Joines* v. *Patterson*, 274 U.S. 544, 553 (1927).

The court of appeals made no effort to reconcile its holding regarding when a cause of action brought by an Indian "accrues" with the purposes of statutes of limitations generally. Nor did it point to any support for that holding in the text, legislative history, or judicial construction of the statutes of limitations that are applicable to this case, 28 U.S.C. 2401(a) and 28 U.S.C. 2409a(f). The only authority the court of appeals cited was this Court's decision in *Ewert* v. *Bluejacket*, 259 U.S. 129, 137 (1922). Pet. App. 4a-6a; see also Br. in Opp. 15-18. But as the court of appeals conceded (Pet. App. 4a-5a), this Court held in *Ewert* only that a state statute of limitations did not bar a suit brought by an Indian to recover land that had been sold in violation of a federal statutory prohibition. The Court made clear in *Oneida II* (slip op. 13 n.13) that this holding in *Ewert* rested on the principle that under the Supremacy Clause, state-law time bars do not apply of their own force to Indian land title claims. See also *United States* v. *Ahtanum Irrigation District*, 236

[9] The policy of repose underlying statutes of limitations has particular force where, as here, the dispute concerns title to real property. *Lewis* v. *Marshall*, 30 U.S. (5 Pet.) 470, 477-478 (1831); cf. *Arizona* v. *California*, 460 U.S. 605, 620 (1983).

F.2d 321, 334 (9th Cir. 1956), cert. denied, 352 U.S. 988 (1957).

The Court did not suggest in *Ewert* that, by virtue of the void nature of the underlying transaction, the cause of action to recover the land in question had not yet even accrued for purposes of the running of the state statute of limitations if that statute *did* apply. Cf. *Joines* v. *Patterson*, 274 U.S. at 553. Accordingly, *Ewert* in no way suggests that an otherwise applicable federal statute of limitations is without force and effect simply because the suit in question is brought by an Indian and is based on an allegedly void sale of land. A fortiori *Ewert* furnishes no support for the court of appeals' and respondent's efforts to avoid the explicit limitations Congress has imposed in 28 U.S.C. 2401(a) and 28 U.S.C. 2409a(f) on the bringing of suits against the United States. As we have explained (see pages 13-14, *supra*), such a limitation on Congress's waiver of sovereign immunity must be strictly enforced, and a court is "not free to construe it so as to defeat its obvious purpose, which is to encourage the prompt presentation of claims." *United States* v. *Kubrick*, 444 U.S. at 117. Yet the court of appeals' interpretation of the term "accrues" renders the statute of limitations wholly inapplicable, and thus powerless to encourage the prompt presentation of claims, whenever the claim is based on an allegedly void transaction.

In any event, 28 U.S.C. 2409a(f) on its face forecloses the argument advanced by respondent and the court of appeals. That provision specifically provides that an action under the QTA "shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." This provision makes

clear that it is sufficient to trigger the running of the limitations period that, as in this case, the plaintiff knew or should have known of the United States' claim of title, irrespective of whether that claim is valid or instead is based on a transaction that proves to have been void.[10]

There is no basis for giving a substantially different construction to 28 U.S.C. 2401(a). That Section requires that an action be brought within six years of when the "right of action *first* accrues" (emphasis added). The quoted language makes clear that the six-year period begins to run from the date on which the plaintiff first has a right to sue (*Soriano* v. *United States*, 352 U.S. at 275)—assuming that he knew or should have known of the factual basis for his suit (cf. *United States* v. *Kubrick*, 444 U.S. at 120, 122). The fact that the transaction giving rise to the cause of action under Section 2401(a) might have been void has no bearing on the plaintiff's right to sue when he first has that knowledge. Accordingly, the allegedly void nature of the transaction does not prevent the "accrual" of the right of action and the commencement of the running of the six-year limitations period under 28 U.S.C. 2401(a). In fact, if respondent's right of action truly has not

[10] The notion that the validity of the United States' claim of title affects the application of the QTA's limitations provision has been rejected in suits involving non-Indians. See *Stubbs* v. *United States*, 620 F.2d 775, 781 (10th Cir. 1980); *Knapp* v. *United States*, 363 F.2d 279, 282-283 (10th Cir. 1980). It is the existence of a claim of title by the United States that gives rise to the right of action under the QTA. See 28 U.S.C. 2409a(d) (the jurisdiction of the district court shall cease if the United States, prior to trial, disclaims all interest in the property adverse to the plaintiff). It is consistent with this statutory premise to begin the running of the limitations period upon notice of that claim.

yet even "accrued," she presumably has no legal right to recover and her suit is premature. Cf. *Kendall* v. *United States*, 107 U.S. at 125. That obviously is not her position, or that of the court of appeals.

In sum, the only authority cited by the court of appeals—*Ewert* v. *Bluejacket*, *supra*—offers no support whatever for its holding that respondent's right of action has not accrued and that this suit is not barred by the statute of limitations. Nor is there any other support for this novel theory, on which the court of appeals' decision is entirely based.

III. THIS SUIT IS IN ANY EVENT BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS, IRRESPECTIVE OF RESPONDENT'S THEORY OF RECOVERY

For the reasons stated in Point II, *supra*, the court of appeals' unprecedented rationale for holding that this suit is not barred by the statute of limitations is wholly without merit. In her brief in opposition, respondent has advanced several other arguments in defense of the judgment below. As we shall explain, however, this suit is barred irrespective of the manner in which respondent characterizes it.

A. Because Respondent Disputes The United States' Title To The Former Allotments, This Suit Is Subject To the Quiet Title Act And Is Barred By Its 12-Year Statute of Limitations

Respondent voluntarily dismissed the complaint in this suit insofar as it sought rescission of the 1954 sales of the three allotments and the revesting of title in respondent and the other heirs of the original allottees. This left only her claim for money damages. Respondent's remaining suit for damages would appear to be one arising under the Tucker Act, 28 U.S.C. 1346(a)(2). See pages 28-32, *infra*.

The court of appeals, however, elected not to read respondent's partial dismissal as an abandonment of her basic contention that sale of the parcels without her consent was void and that she therefore retains title to the land (Pet. App. 4a, 6a). Instead, it believed that the claim for damages should be construed as the equivalent of a claim for return of the land itself (*id* at 6a-7a). The court believed that "[i]n light of the land's inclusion within the Chippewa National Forest and the thirty years which have passed since the sale," if respondent's claims have merit, "she may force the government to pay her the fair market value of the land rather than to simply return the land itself" (*id.* at 8a). If the court of appeals is correct that respondent's complaint still should be construed to assert a claim of title to the three former allotments, then this suit necessarily arises under the Quiet Title Act, 28 U.S.C. 2409a, ard it is barred by the 12-year statute of limitations in that Act.[11]

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[11] In her complaint as originally filed, respondent sought, as an alternative to money damages, the rescission of the original sales and the revesting of title in her (J.A. 10). It therefore seems clear that the complaint stated a claim under the QTA insofar as it disputed the United States' title to the former allotments. Moreover, respondent included 28 U.S.C. 1346 among the alleged bases of jurisdiction (J.A. 7), and subsection (f) of Section 1346 grants the district courts jurisdiction of QTA actions under 28 U.S.C. 2409a(f).

Because respondent, on June 16, 1982, voluntarily dismissed her claim for revesting of title (J.A. 12), the United States' subsequent motion for summary judgment relied only on 28 U.S.C. 2401 in asserting that the suit is barred by the statute of limitations (C.A. App. 11). The district court, noting that respondent sought only damages (Pet. App. 9a), held that the suit is barred by 28 U.S.C. 2401(a). For this reason, the application of 28 U.S.C. 2401(a) was the principal issue discussed in the government's brief on appeal. However, the government's brief also stated that "while not pled

1. In the Quiet Title Act (QTA), Congress consented, with certain exceptions, to the naming of the United States as a party defendant in a civil action "to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights." 28 U.S.C. 2409a(a). This Court held in *Block* v. *North Dakota* that "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property." 461 U.S. at 286 (footnote omitted). The Court applied this rule in *Block* to hold that a State may bring an action only under the QTA to establish its title to real property in which the United States claims an interest, and that the conditions on bringing an action under the QTA—including its 12-year statute of limitations—cannot be avoided by resorting to another form of action. 461 U.S. at 280-286. So, too, the QTA is the exclusive means by which an Indian may bring an action, such as the instant suit, that challenges the United States' title to real property.

Indeed, Congress specifically focused on Indians when it enacted the QTA, yet did not fashion an exception for suits brought by Indians. The QTA expressly "does not apply to trust or restricted Indians

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below, any action to quiet title to this land is barred as well by virtue of the twelve-year statute of limitations in 28 U.S.C. 2409a(f)." Gov't C.A. Br. 8 n.6. See also *id.* at 9 n.8. After the panel chose to construe respondent's complaint, despite the partial dismissal, to continue to assert a claim of title, the government addressed the application of the QTA at length in its petition for rehearing with suggestion for rehearing en banc. That petition was denied without comment (Pet. App. 13a).

lands" (28 U.S.C. 2409a(a)).[12] That language was intended to prevent "[a] unilateral waiver of the defense of sovereign immunity" as to land that the United States holds in trust for Indians: it thereby serves to protect the United States and the Indian beneficiaries from litigation and adverse claims by others and to preserve the commitments the United States has made to the Indian people. *Dispute of Titles on Public Lands: Hearing on S. 216, S. 579 and S. 721 Before the Subcomm. on Public Lands of the Senate Comm. on Interior and Insular Affairs*, 92d Cong., 1st Sess. 19 (1971) [hereinafter cited as *QTA Hearing*]. See *Block* v. *North Dakota*, 461 U.S. at 283, 285, S. Rep. 92-575, 92d Cong., 1st Sess. 2 (1971); H.R. Rep. 92-1559, 92d Cong., 2d Sess. 10-11 (1972). In other words, this language excludes from Congress's waiver of sovereign immunity those cases in which the Indians' interests are aligned with those of the United States as a defendant. The exception does not encompass suits brought by an Indian as a plaintiff to challenge the United States' title to real property that the government does not ostensibly hold in trust for the Indians, but instead holds for other purposes (such as the National Forest in this case). See, *e.g.*, *Grosz* v. *Andrus*, 556 F.2d 972 (9th Cir. 1977). Cf. *Three Affiliated Tribes* v. *Wold Engineering*, No. 82-629 (May 29, 1984), slip op. 8-12. The absence of any such exception for suits brought by

[12] The second sentence of 28 U.S.C. 2409a(a) provides that the QTA does not apply to trust or restricted Indian lands and does not apply to or affect actions that can be brought under several specifically enumerated statutory provisions, including the Tucker Act (28 U.S.C. 1346, 1491) and the McCarran Amendment (43 U.S.C. 666), which consents to the naming of the United States in certain water rights adjudications. See, *e.g.*, *Arizona* v. *San Carlos Apache Tribe*, 463 U.S. 545 (1983).

Indians reinforces the conclusion that such suits are within the scope of the QTA. As a result, an Indian plaintiff is treated the same as any other person who has a claim adverse to that of the United States, and the QTA accordingly is the Indian's exclusive avenue of relief.[13]

For the foregoing reasons, the court of appeals erred in failing to conclude that this suit is subject to the QTA. The court of appeals also erred in holding that where the plaintiff disputes the United States' title to land and seeks to establish his own title, he may force the United States to pay him compensation in the amount of the full market value of the land, rather than to return the land. Under the QTA, if the final determination of title is adverse to the United States, the United States is expressly given the right to retain possession, upon payment to the plaintiff of the amount the district court finds to be just compensation, rather than to be disturbed in its possession. 28 U.S.C. 2409a(b). Affording this "discretionary option" to the government was intended "to insure that the waiver [of sovereign immunity] would not 'serve to disrupt costly ongoing Federal programs that involve the disputed lands'" (*Block* v. *North Dakota*, 461 U.S. at 283, quoting *QTA Hearing* 2, 19). Congress did not, however, confer on the QTA plaintiff who prevails on his claim of title a parallel right to insist upon the payment of compensation rather than the return of the land. This omission from the "precisely drawn" and "de-

[13] Respondent errs in relying (Br. in Opp. 16) on *Spaeth* v. *Secretary of the Interior*, 757 F.2d 937 (8th Cir. 1985), for the proposition that this suit is not covered by the QTA. In *Spaeth*, the United States claimed that the parcels of land in question were "trust or restricted Indian lands" within the meaning of 28 U.S.C. 2409a. See 757 F.2d at 942-943.

tailed" provisions of the QTA (*Block* v. *North Dakota*, 461 U.S. at 285) indicates that Congress deliberately withheld that option from the plaintiff. See *United States* v. *Erika, Inc.*, 456 U.S. 201, 208 (1982).[14]

2. If, as we submit, jurisdiction over this case lies exclusively under the QTA insofar as respondent seeks to establish her title to and recover her interests in the former allotments (or to obtain a money judgment in lieu of recovering the property interests), then the suit is barred by the 12-year statute of limitations in 28 U.S.C. 2409a(f) for actions brought under the QTA.

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[14] Where the United States has lawfully acquired property without paying just compensation at the time of the acquisition, the property owner may bring an action under the Tucker Act to recover that compensation—at least where Congress has not made the Tucker Act unavailable. See *Ruckelshaus* v. *Monsanto Co.*, No. 83-196 (June 26, 1984), slip op. 27-28; *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 125-136, 148 (1974). In this case, however, respondent alleges that the Secretary's sale of her interests in the three allotments without her consent was unlawful under 25 U.S.C. 483 and other statutory provisions. See Br. in Opp. 2-3, 8, 10; J.A. 8. It is well settled that unauthorized conduct by an agent of the government is not the act of the government and therefore is not a taking of property for which the Fifth Amendment requires the payment of compensation. See *Ruckelshaus* v. *Monsanto Co.*, slip op. 27; *Regional Rail Reorganization Act Cases*, 419 U.S. at 127 n.16, quoting *Hooe* v. *United States*, 218 U.S. 322, 336 (1910); *United States* v. *North American Co.*, 253 U.S. 330, 334 (1920). Respondent's claim for a money judgment on the theory that her property was taken for public use without just compensation therefore must fail. If respondent were to regard the sales in 1954 as lawful and to premise her claim to just compensation on an allegation that she did not receive payment for her interests in the allotments at that time, the instant action would in any event be barred by the six-year statute of limitation in 28 U.S.C. 2401(a). See pages 28-32, *infra*.

The Court held in *Block* v. *North Dakota* that a State, like any other party who wishes to take advantage of the waiver of sovereign immunity in the QTA, must comply with the statute of limitations in 28 U.S.C. 2409a(f), which requires that a suit under the QTA shall be barred unless it is brought within 12 years of the date on which it accrued. In concluding that suits brought by States are covered by this statutory condition, the Court relied on the all-inclusive statutory language that imposes a limitation on the bringing of "[*a*]*ny* civil action" under the QTA; the absence of any indication in the legislative history that suits brought by States were meant to be excluded; and the necessarily uniform policy of repose embodied in the limitations period to protect the national public interest. 461 U.S. at 287-290. These same considerations require the conclusion that the generally applicable federal statute of limitations in 28 U.S.C. 2409a(f) also applies to a suit brought by an Indian against the United States to adjudicate a disputed title to real property. See *Grosz* v. *Andrus*, 556 F.2d 972, 974-975 (1977). Cf. *FPC* v. *Tuscarora Indian Nation*, 362 U.S. 99, 115-124 (1960).

Section 2409a(f) provides that an action under the QTA "shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." In this case, the district court found that respondent knew of the sales in 1954 (Pet. App. 10a). This suit, which was commenced in 1981, more than a quarter of a century later, therefore is clearly barred by the 12-year statute of limitations under the QTA.

B. Respondent's Suit Is Barred By The Six-Year Statute Of Limitations In 28 U.S.C. 2401(a) Insofar As She Seeks Damages For Allegedly Unlawful Conveyances Of The Allotments In 1954

Respondent also has characterized her suit as one seeking money damages for a breach of fiduciary duty by the United States based on allegedly unlawful sales of the allotments in 1954 without her consent. See J.A. 8, 10; Br. in Opp. 9-12; Pet. App. 6a. She argues that the district court has jurisdiction over such a damages claim under the Tucker Act, 28 U.S.C. 1346(a)(2), by virtue of this Court's decisions in *United States* v. *Mitchell* (*Mitchell I*), 445 U.S. 535 (1980) and *United States* v. *Mitchell* (*Mitchell II*), 463 U.S. 206 (1983). See Br. in Opp. 7-12; J.A. 7.[15]

We agree that the Tucker Act would furnish a basis of jurisdiction over a damage action such as this.[16] However, the district court now is barred from

[15] The district courts and Claims Court have concurrent jurisdiction over suits for money damages under the Tucker Act where the amount in controversy is $10,000 or less. 28 U.S.C. 1346(a)(2), 1491. Where the amount in controversy exceeds that amount, the Claims Court's jurisdiction is exclusive.

[16] Of course, the Tucker Act itself creates no substantive right to money damages. For this reason, as respondent acknowledges (Br. in Opp. 9, 10-12), in order to recover in a suit under the Tucker Act, respondent would be required to establish that whatever statutory provision she maintains was violated by the sales in 1954 "'"can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained."'" *Mitchell II*, 463 U.S. at 217, quoting *United States* v. *Testan*, 424 U.S. 392, 400 (1976), and *Eastport S.S. Corp.* v. *United States*, 372 F.2d 1002, 1009 (Ct. Cl. 1967).

Respondent also alleged that the Secretary was "negligent" in selling the allotments without the consent of everyone who had an interest in them (J.A. 10). Perhaps respondent thereby intended to state a cause of action under the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671 *et seq.* However, any claim under the FTCA is barred unless it is presented to the appropriate federal agency within two years after it accrues or unless the action is begun within 6 months of the notice of final denial of the claim. 28 U.S.C. 2401(b). See 28 U.S.C. 2675. This provision applies equally to a tort claim by an Indian. *Mann* v. *United States*, 399 F.2d 672, 673 (9th Cir. 1968). There has been no suggestion that respondent submitted a claim to the Department of the Interior within two years of the sales by the Secretary in 1954, and any action under the FTCA would have long since been barred by the time this suit was filed in 1981.

exercising that jurisdiction by the six-year statute of limitations in 28 U.S.C. 2401(a), which respondent concedes (Br. in Opp. 17) is applicable to a Tucker Act suit brought in district court. Section 2401(a) provides that, except as provided under the Contract Disputes Act of 1978, "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." Just as the broad reference in the QTA's statute of limitations to "[a]ny civil action" includes actions filed by Indians, so too the broad reference in Section 2401(a) to "every civil action" includes a suit filed by an Indian—here, a suit under the Tucker Act for money damages.

There is no indication that Congress contemplated an implied exception from the plain language of Section 2401(a) for a Tucker Act suit brought by an Indian. To the contrary, in *Mitchell I*, this Court recognized the intent of Congress to treat Indians and non-Indians alike under the Tucker Act. There, the Court considered 28 U.S.C. 1505, which granted the Court of Claims (now the Claims Court) jurisdiction over any claim for money damages against the United States by an Indian tribe. The Court quoted the

legislative history of the provision, which stated that the tribal claimants " 'are to be entitled to recover in the same manner, to the same extent, *and subject to the same conditions and limitations, and the United States shall be entitled to the same defenses,* both at law and in equity, * * * as in cases brought in the Court of Claims by non-Indians under [28 U.S.C. 1491].' " 445 U.S. at 539 (emphasis added), quoting H.R. Rep. 1466, 79th Cong., 1st Sess. 13 (1945). In particular, it was intended that such Indian tribal claims would be governed by the six-year statute of limitations in what is now 28 U.S.C. 2501, which is applicable to all Tucker Act suits in the Claims Court under 28 U.S.C. 1491. *Creation of Indian Claims Commission: Hearings on H.R. 1198 and H.R. 1341 Before the House Comm. on Indian Affairs,* 79th Cong., 1st Sess. 149 (1945) (section-by-section analysis submitted by Felix Cohen). See *Lindahl* v. *OPM,* No. 83-5954 (Mar. 3, 1985), slip op. 18.[17] It follows *a fortiori* that Tucker Act claims brought in the Claims Court by individual Indians, which arise directly under 28 U.S.C. 1491, are likewise governed by the six-year statute of limitations in 28 U.S.C. 2501.

[17] The permanent provision vesting the Court of Claims with jurisdiction over tribal claims was intended to eliminate the need for special jurisdictional acts to enable the Court of Claims to consider tribal claims. See *United States* v. *Dann,* No. 83-1476 (Feb. 20, 1985), slip op. 6-7. These Acts often imposed time limitations for the consideration of Indian claims. See, *e.g.,* Act of June 3, 1920, ch. 222, 41 Stat. 738-739. In addition, in 1946, when Congress enacted 28 U.S.C. 1505 and created the Indian Claims Commission to adjudicate claims arising prior to 1946 (25 U.S.C. (1970 ed.) 70 *et seq.*), it imposed a five-year limitation on the period within which claims could be brought before the Commission. 25 U.S.C. (1976 ed.) 70. Congress's pattern of imposing such time limits in statutes that specifically address claims by Indians against the United States substantially undermines any argument for an implied exception from generally applicable statutes of limitation for such suits.

Correspondingly, the Court of Claims and Federal Circuit uniformly have held that suits for money damages brought by Indian tribes or individual Indians against the United States are subject to the six-year statute of limitations in 28 U.S.C. 2501. In so holding, those courts have rejected the proposition that the existence of a fiduciary or trust relationship between the United States and the Indians with respect to the property in question rendered the statute of limitations inapplicable. See, *e.g., Menominee Tribe* v. *United States,* 726 F.2d 718, 721-722 (Fed. Cir. 1984), cert. denied, No. 83-1922 (Oct. 1, 1984); *Hydaburg Co-Op Ass'n* v. *United States,* 667 F.2d 64, 69-70 (Ct. Cl. 1981), cert. denied, 459 U.S. 905 (1982); *Fort Mojave Tribe* v. *United States,* 210 Ct. Cl. 727, 728 (1976); *Andrade* v. *United States,* 485 F.2d 660, 664 (Ct. Cl. 1973), cert. denied, 419 U.S. 831 (1974); *Capoeman* v. *United States,* 440 F.2d 1002 (Ct. Cl. 1971).[18] In light of this consistent in-

[18] In *Capoeman,* the Court of Claims also rejected the contention that Indians are excluded from the running of the limitations period by virtue of the provision in 28 U.S.C. 2501 (which likewise appears in 28 U.S.C. 2401(a)) that the claim of a person "under legal disability or beyond the seas" at the time the claim accrues may be filed within three years after the disability ceases. See 440 F.2d at 1003-1005. The court construed this language to refer to a legal disability that impaired the claimant's access to the court. *Id.* at 1004; see also *Goewey* v. *United States,* 612 F.2d 539, 544 (Ct. Cl. 1979). There has been no suggestion in this case that respondent was under a legal disability that tolled the running of the limitations period under 28 U.S.C. 2401(a). She presumably was as capable of suing in 1954 as she was in 1981. See, *e.g., Poafpybitty* v. *Skelly Oil Co.,* 390 U.S. 365, 368-369 (1968). Cf. *Oneida II,* slip op. 7-8. The existence of this express ex-

terpretation, there is no reason why an implied exception to the parallel six-year statute of limitations in 28 U.S.C. 2401(a) should be recognized for suits brought by Indians. And in fact no such exception has been recognized. See *Loring* v. *United States*, 610 F.2d 649, 650 (9th Cir. 1979); *Christensen* v. *United States*, 755 F.2d 705, 706-707 (9th Cir. 1985), petition for cert. pending, No. 85-372; *Big Spring* v. *United States Bureau of Indian Affairs*, 767 F.2d 614, 616-617 (9th Cir. 1985).

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ception for certain claimants who might be incapable of suing within the six-year period further reinforces the conclusion that Indians who are not under such a particularized disability are, like all other claimants, covered by the statutes of limitations in 28 U.S.C. 2401(a) and 2501. See *Soriano* v. *United States*, 352 U.S. at 272-274; *Kendall* v. *United States*, 107 U.S. at 125.

The Court of Claims did suggest in *Capoeman* that the statute of limitations in 28 U.S.C. 2501 might not bar a suit brought by an Indian after the passage of six years from the date on which it first could have been brought if: the suit involved a liquidated claim for money, the money had been appropriated by Congress, and the government did not contest the validity of the claim. 440 F.2d at 1003. See also *Christensen* v. *United States*, 583 F. Supp. 1539, 1540-1541 (D. Nev. 1984), aff'd, 755 F.2d 705, 706-707 (9th Cir. 1985), petition for cert. pending, No. 85-372. In such a case, however, there is no real "exception" to the statute of limitations. The United States holds the funds in question for the benefit of the plaintiff and is under a continuing duty to make the funds available to the plaintiff upon demand, whether or not six years have passed since the time at which he first might have made such a demand. See *United States* v. *Taylor*, 104 U.S. 216, 221-222 (1881). This rationale has no application here.

C. Respondent Is Foreclosed From Bringing An Action Under 25 U.S.C. 345 And 28 U.S.C. 1353, Which Permit The District Courts To Entertain Suits Involving A Right To An Allotment

In addition to relying on 28 U.S.C. 1346, which confers jurisdiction on the district courts over Tucker Act and QTA suits (28 U.S.C. 1346(a)(2) and (f)), respondent also alleged that the district court had jurisdiction under 25 U.S.C. 345 and 28 U.S.C. 1353 (J.A. 7). As we explain below, these provisions do not furnish a basis for jurisdiction in this case. But even if they did, respondent's suit would be barred by the six-year statute of limitations in 28 U.S.C. 2401(a) that is applicable to "every civil action commenced against the United States" in district court.

1. *The District Court Did Not Have Jurisdiction Under 25 U.S.C. 345 Or 28 U.S.C. 1353*

The two statutory provisions pertaining to allotments upon which respondent relies were intended to confer jurisdiction on the district courts only with respect to suits for an "original allotment." F. Cohen, *Handbook of Federal Indian Law* 380 n.184 (1942). This case, however, presents no question of a right to receive an original allotment of reservation land under the General Allotment Act or the Nelson Act; the parcels in which respondent now claims an interest were allotted to the original allottees, respondent's ancestors, in 1905 (Pet. App. 5a). The parcels then were sold by the Secretary almost 50 years later. Respondent contends that those sales were unlawful, and she seeks to establish her title to the allotments and obtain a money judgment in lieu of their return. A district court has no jurisdiction under 28 U.S.C. 345 and 28 U.S.C. 1353 over such a suit, because those statutory provisions do not extend to a challenge to the administration or disposition of

a parcel of land after it has been allotted. And at least since the passage of the QTA, those provisions also do not confer jurisdiction over a suit to adjudicate a disputed title to a previously allotted parcel in which the United States claims an interest in a capacity other than that of trustee for the Indians concerned.

1. The statute upon which respondent principally relies, 25 U.S.C. 345, provides in relevant part:

> All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding * * * involving the right of any person * * * to any allotment of land under any law or treaty * * *; and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him[.]

In a number of respects this provision on its face is limited to a suit by an Indian to establish his right to receive an allotment from the Secretary. First, it refers to an Indian who is "entitled to an allotment," who claims to be so entitled, or claims to have been "unlawfully denied or excluded from any allotment

or any parcel of land" to which he is entitled under an Act of Congress. All of these phrases would appear to refer to a person who is claiming a right under an Act of Congress to participate, along with other members of the tribe concerned, in the Secretary's initial dividing up of the reservation in severalty. Moreover, the jurisdictional grant is specifically limited to those suits "involving the right of any person * * * to any allotment." This language does not encompass a plaintiff, such as respondent in this case, who is seeking to recover a parcel of land that *previously* was patented to an Indian in satisfaction of his right to an allotment and then conveyed out of trust status.

The interpretation of 25 U.S.C. 345 just suggested is reinforced by two features of its concluding clause. First, that clause refers to a "claimant to an allotment," which likewise connotes a person claiming an entitlement to receive an allotment from the Secretary in the first instance. Second, it provides that the court's judgment in a suit under 25 U.S.C. 345, when certified to the Secretary, shall have the same effect "as if such allotment had been allowed and approved by him." As the General Allotment Act makes clear, an allotment is "allowed and approved" by the Secretary as part of the initial division and assignment of reservation land to individual Indians. See *Affiliated Ute Citizens* v. *United States*, 406 U.S. 128, 142 (1972).[19] The judgment the plaintiff seeks in a suit

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[19] As stated in the General Allotment Act, 25 U.S.C. 331 (the President is authorized "to cause allotment to each Indian located [on the reservation] to be made * * * not to exceed eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian"); 25 U.S.C. 333 ("The allotments * * * shall be made by special agents appointed by the President * * * under such rules and regulations as the Secretary of the Interior may from time to time pre-

under 25 U.S.C. 345 therefore is the equivalent of an order directing the Secretary to take the steps necessary for the issuance of a patent. By contrast, in a suit brought by an Indian to recover a previously allotted parcel of land that was sold by the United States, the recovery of possession of the land and the confirmation of equitable title in the Indian is not the equivalent of an original allotment of the parcel.

2. The interpretation of 25 U.S.C. 345 suggested by its plain language (which does not encompass this suit) is confirmed by its origins and by the legislative history of several amendatory acts. Section 345 is derived from the Act of August 15, 1894, ch. 290, 28 Stat. 305, an Act appropriating money for the conduct of Indian affairs. The paragraph immediately preceding the predecessor to 25 U.S.C. 345 appropriated money to allow the President to survey Indian lands "and to complete the allotment of the same" pursuant to the General Allotment Act of 1887. See 28 Stat. 304-305. The quoted phrase indicates that the term "allotment" was understood to refer to the process of assigning parcels to individuals, which would be "complete[d]" within a discrete period of time. The most reasonable construction of the succeeding paragraph, the present 25 U.S.C. 345, is that it was intended only to resolve disputes concerning the entitlement of individual Indians that might arise during that transitional process of division and assignment. In other words, as one court construing the Act soon after enactment explained, it was intended "to settle the rights of parties seeking allotments in severalty" and "was adopted for the pur-

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scribe, and shall be certified by such special allotting agents."); 25 U.S.C. 348 ("Upon approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees * * *.").

pose of affording to claimants who were refused recognition by the land department the opportunity to litigate their rights before a judicial tribunal." *Sloan* v. *United States*, 95 F. 193, 195 (C.C.D. Neb. 1899), appeal dismissed, 193 U.S. 614 (1904).

At every step, the subsequent history of 25 U.S.C. 345 confirms this limited scope:

a. The committee reports on the Act of February 6, 1901, ch. 217, 31 Stat. 760 *et seq.*, which amended the 1894 Act to provide for a manner of securing service in suits arising under it, stated that the 1894 Act "authorize[d] the institution of suits or proceedings in the circuit court [now the district court] of the United States by *claimants for allotments of Indian land.*" H.R. Rep. 1714, 56th Cong., 1st Sess. 1 (1901) (emphasis added); S. Rep. 2040, 56th Cong., 2d Sess. 1 (1901). There was no suggestion that Congress intended to consent to suits by Indians against the United States with respect to other matters that might arise after the original claimants had obtained their allotments, as in this case.

b. In 1906, Congress excepted the Osage Indians from the coverage of the 1894 Act in a manner that is directly relevant to the interpretation of the present 25 U.S.C. 345. See Act of June 28, 1906, ch. 3572, § 1, 34 Stat. 540; *United States ex rel. Jump* v. *Ickes*, 117 F.2d 769 (D.C. Cir. 1940), cert. denied, 313 U.S. 575 (1941). Section 1 of the 1906 Act provided that the roll of the Osage Tribe that was then shown on the records of the United States was to be regarded as the final roll, although Section 1 permitted the Secretary to revise that roll in certain respects. Section 2 of the 1906 Act provided for the selection of allotments by members of the Osage Tribe, with all controversies to be settled by a Commission consisting of three members of the Tribe. 34 Stat.

541. Section 1 of the 1906 Act further stated that the provisions of the 1894 Act "granting persons of Indian blood who have been *denied allotments* the right to appeal to the courts, are hereby repealed as far as the same relate to the Osage Indians" (34 Stat. 540; 25 U.S.C. 345 note (emphasis added)). Congress thus placed in statutory form an interpretation of the 1894 Act that limits its reach to suits by Indians who were "denied allotments" by the Secretary. This interpretation also is evident from the fact that Congress believed the 1894 Act would be unnecessary for the Osage Indians because all matters pertaining to the allotment process were to be resolved by the special Osage Commission. Congress therefore obviously did not contemplate that an Indian would have occasion to invoke that statute after he received his allotment.

c. This same understanding is reflected in the text and legislative history of the 1911 revision of the judicial code, which, inter alia, vested jurisdiction to entertain suits under 25 U.S.C. 345 in the district courts, rather than the circuit courts, as under the 1894 Act. See Act of Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167. Consistent with this action, Congress included in the section of the judicial code that contained the various jurisdictional grants to the district courts a grant of jurisdiction "[o]f all actions, suits, or proceedings involving the *right of any person*, in whole or in part of Indian blood or descent, *to any allotment of land under any law or treaty.*" § 24(24), 36 Stat. 1094 (emphasis added). As we have explained (see page 35, *supra*), the emphasized language, which was drawn directly from the jurisdictional grant in the 1894 Act, connotes a suit to obtain an allotment in the first instance.

Moreover, the cases that had arisen under the 1894 Act by the time of the 1911 revision of the judicial code involved questions of an Indian's entitlement to

receive an allotment or disputes between several Indians claiming a right to an allotment of the same parcel of land.[20] One such case was cited in the legislative history. See S. Rep. 388, 61st Cong., 2d Sess. Pt. 1, at 62 (1910), citing *Smith* v. *He-Yu-Tse-Mil-Kin*, 110 F. 60 (C.C.D. Or. 1901), aff'd, 194 U.S. 401 (1904). Because the jurisdictional grant enacted in 1911 (the present 28 U.S.C. 1353) was "but a codification" of the then-existing jurisdictional grant in the 1894 Act (*First Moon* v. *White Tail*, 270 U.S. 243, 245 (1926)), the background of its enactment indicates that both 25 U.S.C. 345 and 28 U.S.C. 1353 are to be understood to be confined to such suits.

d. Finally, an amendment to the new judicial code enacted shortly thereafter reflects the same view of the jurisdictional provision. As originally enacted in March 1911, that provision did not contain the exception in the 1894 Act for lands held by the Five Civilized Tribes or the Quapaw Indian Agency. Compare 28 Stat. 305 with 36 Stat. 1094. Congress quickly corrected that omission in the Act of December 21, 1911, ch. 5, 37 Stat. 46 *et seq.* "The original act did not apply to the Five Civilized Tribes of Indians nor the Quapaw Agency, for the reason that the determination of allotments was contemplated to be exercised by the Commission to the Five Civilized Tribes" (48 Cong. Rec. 576 (1911)).[21] Congress

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[20] See, *e.g.*, *Sloan* v. *United States*, *supra*; *Waldron* v. *United States*, 143 F. 413 (C.C.D.S.D. 1905); *Guyett* v. *McWhirk*, 154 F. 784 (C.C.D. Or. 1907); *United States* v. *Fairbanks*, 171 F. 337 (8th Cir. 1909), affd, 223 U.S. 215 (1912); *Reynolds* v. *United States*, 174 F. 212 (8th Cir. 1909).

[21] See generally *Woodward* v. *de Graffenried*, 238 U.S. 284 (1915); F. Cohen, *Handbook of Federal Indian Law* 773-777 (1958).

feared that the omission of a parallel exception from the jurisdictional provision enacted in March 1911 might "lead to extended litigation and delay the settlement of the affairs of the Five Civilized Tribes for some years to come." S. Rep. 147, 62d Cong., 2d Sess. 2 (1911). As in the case of the Osage Tribe (see page 38, *supra*), Congress's conclusion that the jurisdictional grants in 25 U.S.C. 345 and 28 U.S.C. 1353 were unnecessary after the allotment process for the Five Civilized Tribes was completed by the Dawes Commission further demonstrates that Congress did not intend a role for those provisions with respect to Indians who already had received an allotment.

Moreover, the House Report on the Act of December 21, 1911 stated that "[t]he plain intention of [the 1894 Act] was to authorize any person claiming to be entitled to *receive an allotment* to prosecute his claim" (48 Cong. Rec. 576 (1911) (emphasis added)). The report further observed that the obvious purpose of the revision of the judicial code in March 1911 was to give the district courts the same jurisdiction theretofore exercised by the circuit courts. However, the report noted that the language used was "ambiguous," and it explained that the amended version of the jurisdictional grant conformed to the 1894 Act by providing "a remedy to any claimants *for an allotment alleged to be unlawfully denied*" (*ibid.* (emphasis added)). Thus, whatever ambiguity might previously have existed, Congress made clear when it enacted the Act of December 21, 1911 ~~amendments~~ (as it had before) that the provisions now contained in 25 U.S.C. 345 and 28 U.S.C. 1353 were intended to confer jurisdiction only over suits to obtain an original allotment that the Secretary had improperly withheld.

3. This Court's decisions reflect the same view of 25 U.S.C. 345 and 28 U.S.C. 1353. In *First Moon* v. *White*

Tail, *supra*, the Court held that the present 28 U.S.C. 1353 did not confer jurisdiction on the district court to entertain an action brought against the United States and an heir of the original allottee by another Indian who also claimed to be an heir of the allottee but who had been determined by the Secretary not to be entitled to an interest in the allotment. The Court explained that the statutory provision "has reference to original allotments claimed under some law or treaty, and not to disputes concerning the heirs of one who held a valid and unquestioned allotment." 270 U.S. at 245. Similarly, in *Arenas* v. *United States*, 322 U.S. 419, 430 (1944), the Court observed that under 25 U.S.C. 345, "the courts have decided disputes between Indians and the Government as to the relative qualifications of two claimants to receive, as a member of a band, a patent, *Hy-Yu-Tse-Mil-Kin* v. *Smith*, 194 U.S. 401, and whether particular lands were appropriate for allotment, *United States* v. *Payne*, 264 U.S. 446 [(1924)]." See also *Halbert* v. *United States*, 283 U.S. 753, 755 (1931).

Most recently, in *Affiliated Ute Citizens* v. *United States*, 406 U.S. at 142, the Court said of 25 U.S.C. 345:

> This, however, is an allotment statute. Allotment is a term of art in Indian law. U.S. Dept. of the Interior, Federal Indian Law 774 (1958). It means a selection of specific land awarded to an individual allottee from a common holding. *Reynolds* v. *United States*, 174 F. 212 (CA8 1909). See the Act of February 8, 1887, 24 Stat. 388, as amended, 25 U.S.C. §§ 331-334. Section 345 authorizes, and provides governmental consent for, only actions for allotment.

The Court cited for this proposition not only *First Moon* and *Arenas*, but also two court of appeals de-

cisions holding that 25 U.S.C. 345 is limited to suits to determine the right of an Indian to an allotment and "gives no general consent of the United States to be sued even in connection with its administration of allotments" (*United States* v. *Preston*, 352 F.2d 352, 355-356 (9th Cir. 1965); *Harkins* v. *United States*, 375 F.2d 239, 241 (10th Cir. 1967)).

Against this background, it is clear that 25 U.S.C. 345 and 28 U.S.C. 1353 permit suits only "for an original allotment." F. Cohen, *Handbook of Federal Indian Law* 380 n.184 (1942). Respondent does not advance a claim in this case for an "original allotment." Rather, she seeks to establish her title to three parcels that were conveyed out of trust status after their allotment and to recover a money judgment from the United States in lieu of recovering her interests in those parcels. Her claims therefore arise "in connection with [the government's] administration of [the] allotments" (*United States* v. *Preston*, 352 F.2d at 356)—namely, the Secretary's sale of those parcels, allegedly without her consent and in violation of 25 U.S.C. 483 and other statutory provisions. This suit therefore is not within the jurisdictional grant in 25 U.S.C. 345 or 28 U.S.C. 1353.[22]

[22] Although the Seventh Circuit has adhered to the view of the scope of 25 U.S.C. 345 and 28 U.S.C. 1353 discussed in the text (see *Coleman* v. *United States Bureau of Indian Affairs*, 715 F.2d 1156, 1162 (7th Cir. 1983)), the Eighth, Ninth and Tenth Circuits have construed those provisions to extend to more than suits for an original allotment. See, *e.g.*, *Fontenelle* v. *Omaha Tribe*, 430 F.2d 143 (8th Cir. 1970); *Gerard* v. *United States*, 167 F.2d 951, 953 (9th Cir. 1948); *Scholder* v. *United States*, 428 F.2d 1123, 1125-1126 (9th Cir.), cert. denied, 400 U.S. 942 (1970); *Loring* v. *United States*, 610 F.2d 649 (9th Cir. 1979); *Christensen* v. *United States*, *supra*; *Big Spring* v. *United States Bureau of Indian Affairs*, 767 F.2d 614, 616 (9th Cir. 1985); *Begay* v. *Albers*, 721 F.2d 1274 (10th Cir. 1983). However, these decisions did not consider the legislative history of 25 U.S.C. 345 and 28 U.S.C. 1353, discussed above, and the Ninth and Tenth Circuits previously had taken a contrary view (see *United States* v. *Eastman*, 118 F.2d 421, 423 (9th Cir. 1941); *Harkins* v. *United States*, 375 F.2d 239, 241 (10th Cir. 1967); *Vicenti* v. *United States*, 470 F.2d 845, 846 (10th Cir. 1972), cert. dismissed, 414 U.S. 1057 (1973).

For the reasons stated in the text, we believe that the more recent decisions of the Eighth, Ninth and Tenth Circuits, the earliest of which was rendered more than 50 years after the statutory provision was enacted in 1894 (compare *Mountain States Telephone & Telegraph Co.* v. *Pueblo of Santa Ana*, No. 84-262 (June 10, 1985), slip op. 16), are incorrect and should not be followed, especially since they are contrary to this Court's consistent interpretation. In *Begay* v. *Albers*, *supra*, the Tenth Circuit found an alternative basis of jurisdiction under 28 U.S.C. 1331 insofar as that case was brought against the private defendants. See 721 F.2d at 1279. This case of course does not involve the question whether an allottee claimant may bring such an action under 28 U.S.C. 1331.

4. Although the narrow scope of 25 U.S.C. 345 and 28 U.S.C. 1353 appears evident, it is not necessary in this case conclusively to resolve the precise nature of the cause of action and jurisdictional grant in those statutory provisions, particularly as against private parties. This is so because respondent does not in any event have a right of action against the United States under these provisions in the circumstances of this case.

Insofar as respondent disputes the title to the three parcels acquired by the United States in 1954, it now is irrelevant whether respondent might have brought such an action under 25 U.S. 345 and 28 U.S.C. 1353 prior to the enactment of the QTA in 1972. As this Court held in *Block* v. *North Dakota*, 461 U.S. at 284-286, the QTA is now the exclusive means by which any person, including an Indian, may obtain an adjudication of a disputed title to land in

which the United States claims an interest. See *Block* v. *North Dakota*, 461 U.S. at 284-286. If the result were otherwise, all of the "carefully crafted provisions of the QTA deemed necessary for the protection of the national public interest"—including the QTA's 12-year statute of limitations—"could be averted." 461 U.S. at 284-285.[23] Moreover, under the court of appeals' view that respondent's demand for a money judgment in the amount of the current fair market value of her interests in the three parcels is to be viewed as the equivalent of a demand for the return of the property, that aspect of respondent's suit also is subject to the QTA and, for that reason alone, cannot be brought under 25 U.S.C. 345 and 28 U.S.C. 1353.[24]

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[23] In the sort of case for which 25 U.S.C. 345 and 28 U.S.C. 1353 were intended—a suit to obtain an original allotment from the United States—the plaintiff would not dispute the United States' title to the land. The plaintiff would acknowledge that title, held in trust for the Indians concerned, and simply seek to have the nature of the Indians' beneficial interest converted from common to individual ownership. Cf. *McKay* v. *Kalyton*, 204 U.S. 458, 468-469 (1907). Such a suit therefore would not be subject to QTA.

[24] To the extent Congress intended to preserve remedies against the United States under other statutory provisions when it enacted the QTA, it expressly so provided. See note 12, *supra*. But Congress did not include suits under 25 U.S.C. 345 and 28 U.S.C. 1353 among those exceptions. Any right of action that previously might have existed under those provisions to challenge the United States' title to real property accordingly did not survive enactment of the QTA. In light of this Court's then-recent decision in *Affiliated Ute*, which was rendered on April 24, 1972, and gave Section 345 a narrow reading that does not extend to quiet title actions against the United States (see page 41, *supra*), it is understandable that Congress did not include an exception for such suits when it enacted the QTA six months later, on October 25, 1972. Pub. L. No. 92-562, 86 Stat. 1176 *et seq.* Compare *Block* v. *North Dakota*, 461 U.S. at 282.

Nor, in our view, do 25 U.S.C. 345 and 28 U.S.C. 1353 furnish a basis of jurisdiction or a substantive right to money damages against the United States for breach of a fiduciary duty in connection with the administration of allotted lands—such as the alleged sale in 1954 of the three previously allotted parcels involved in this case. See *Vicenti* v. *United States*, 470 F.2d 845, 847-848 (10th Cir. 1972); *Harkins* v. *United States*, 375 F.2d 239, 241 (10th Cir. 1967). A waiver of the United States' sovereign immunity to a suit for money damages must be express. *Mitchell II*, 463 U.S. at 212. Nothing in the language of 25 U.S.C. 345 suggests the availability of money damages. To the contrary, that section prescribes a specific remedy of a wholly different sort: the judgment in favor of the claimant has the same effect, when certified to the Secretary, as if the allotment had been allowed and approved by the Secretary. The prescription of this remedy, in the nature of declaratory judgment, substantially undermines any argument that 25 U.S.C. 345 mandates the payment of compensation. Compare *Mitchell II*, 463 U.S. at 217.[25]

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[25] The court in *Antoine* v. *United States*, 637 F.2d 1177, 1182 (1981), opinion after remand, 710 F.2d 477 (8th Cir. 1983), believed that 25 U.S.C. 346 supported recognition of a right of action for money damages under 25 U.S.C. 345. Section 346 provides, inter alia, for the United States Attorney to answer a complaint filed under Section 345 by filing "a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises." The court in *Antoine* believed that the reference to a "set-off" meant that Congress contemplated that damages claims could be brought under 25 U.S.C. 345. The court read far too much into this single term. Section

Nor is there any indication in the legislative history of the predecessor statutes or 28 U.S.C. 1353 of an intent to expose the government to monetary liability. For these reasons, if any statute creates a substantive right to money damages in this case, it is not 25 U.S.C. 345, but 25 U.S.C. 483 or other statutory provisions that bar the sale of an allotment if not authorized by Congress. See, *e.g.*, 25 U.S.C. 348, 464. A suit to recover damages from the United States under those provisions, like such a damage action arising under any other Act of Congress, can be brought in district court only under the Tucker Act.

That the Tucker Act is the exclusive basis for respondent's damages action is evident from the text of the Tucker Act itself, which grants the district courts jurisdiction over civil actions against the United States, not exceeding $10,000 in amount, that are "founded * * * upon * * * *any* Act of Congress" (28 U.S.C. 1346(a)(2) (emphasis added)). The Tucker Act thus was intended to be a " 'comprehensive measure by which claims against the United States may be heard and determined." *Mitchell II*,

346 was enacted as Section 2 of the Act of February 6, 1901, 31 Stat. 760, discussed at page 37, *supra*. The purpose of that Act was to provide a "uniform manner for securing service" in cases covered by the 1894 Act. H.R. Rep. 1714, *supra*, at 1; S. Rep. 2040, *supra*, at 1. To accomplish that goal of uniformity, Congress simply incorporated verbatim into the present 25 U.S.C. 346 the terms of Section 6 of the Tucker Act (Act of Mar. 3, 1887, ch. 359, 24 Stat. 506), which prescribes the method of service under that Act. H.R. Rep. 1714, *supra*, at 1; S. Rep. 2040, *supra*, at 1. Because the provision was derived from the Tucker Act, it is natural that it would make reference to a possible "set-off." But that incorporation scarcely suggests that Congress intended to provide a cause of action for money damages when it enacted the predecessor to 25 U.S.C. 345 seven years earlier.

463 U.S. at 213, quoting H.R. Rep. 1077, 49th Cong., 1st Sess. 1 (1886). Moreover, in *Mitchell I* and *Mitchell II*, the plaintiffs sought to recover money damages based on violations of fiduciary duties imposed by various statutes governing the administration of allotments, and that suit was brought under the Tucker Act. Respondent similarly asserts (Br. in Opp. 10-12) that the Secretary's actions in this case violated fiduciary duties imposed by 25 U.S.C. 483 and other statutes. Respondent's efforts to recover money damages for these alleged violations therefore must also be brought under the Tucker Act, subject to the six-year statute of limitations in 28 U.S.C. 2401(a).

2. This Suit Is Barred By The Six-Year Statute Of Limitations In 28 U.S.C. 2401(a) Even If Jurisdiction Does Lie Under 25 U.S.C. 345 or 28 U.S.C. 1353

There is no need to consider further, however, whether 25 U.S.C. 345 and 28 U.S.C. 1353 furnish a basis for this suit against the United States. Even if they do, this suit remains barred by the six-year statute of limitations in 28 U.S.C. 2401(a). Section 2401(a) applies to "every civil action commenced against the United States" in district court.[26] This all-embracing language necessarily includes civil actions aginst the United States under 25 U.S.C. 345 and 28 U.S.C. 1353.

Respondent argues (Br. in Opp. 16-19), however, that the statute of limitations in 28 U.S.C. 2401(a)

[26] Section 2401(a) contains a single exception for suits under the Contract Disputes Act of 1978. See note 6, *supra*. In addition, if another, more specific statute of limitations applies to a particular suit, such as that under the FTCA or QTA (28 U.S.C. 2401(b) or 2409a(f)), the more specific provision applies.

applies only to actions under the Tucker Act. This argument has been rejected by every court of appeals that has considered the question. *Geyen* v. *Marsh*, No. 84-4607 (5th Cir. Nov. 5, 1985), slip op. 472-473; *Walters* v. *Secretary of Defense*, 725 F.2d 107, 113 (D.C. Cir. 1983), quoting *Werner* v. *United States*, 188 F.2d 266, 268 (9th Cir. 1951). See also *Christensen* v. *United States*, 755 F.2d at 706; *Impro Products, Inc.* v. *Block*, 722 F.2d 845, 850 n.8 (D.C. Cir. 1983), cert. denied, No. 84-170 (Oct. 29, 1984); *Boruski* v. *United States*, 493 F.2d 301, 304 n.5 (2d Cir.), cert. denied, 419 U.S. 808 (1974); *Screven* v. *United States*, 207 F.2d 740, 741 (5th Cir. 1953).

Respondent relies on the fact that prior to 1948, the paragraph that conferred Tucker Act jurisdiction on the federal district courts contained a six-year statute of limitations (see 28 U.S.C. (1946 ed.) 41(24)), but the paragraph that conferred jurisdiction over actions involving a right to allotments did not (see 28 U.S.C. (1946 ed.) 41(24)). She argues that 28 U.S.C. 2401(a) therefore should also be limited to suits under the Tucker Act. Respondent completely ignores the significance of the amendments Congress made in 1948.

The former Section 41(20) of Title 28 provided that "[n]o suit against the Government of the United States shall be allowed *under this paragraph* [*i.e.*, under the Tucker Act] unless the same shall have been brought within six years after the right accrued for which the claim is made" (emphasis added). By contrast, as a result of the 1948 revision, the relevant statute of limitations, 28 U.S.C. 2401(a), is not tied to any particular jurisdictional grant. It instead appears in Chapter 161 of Title 28, entitled "United States as Party *Generally*," and it applies to "*every* civil action commenced against the United States" (emphasis added). Thus, Congress clearly made the

statute of limitations in 28 U.S.C. 2401(a) applicable not only to suits arising under the Tucker Act (to which the limitations period in 28 U.S.C. (1946 ed.) 41(20) was expressly confined), but also to other actions against the United States, including those under 25 U.S.C. 345 and 28 U.S.C. 1353.

In sum, no matter what the theory of respondent's 27-year-old claim—whether it is viewed as an action to adjudicate a disputed title under the Quiet Title Act, a suit for money damages under the Tucker Act, or a proceeding involving a right to an allotment under 25 U.S.C. 345 and 28 U.S.C. 1353—it is barred by the applicable statute of limitations.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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JANUARY 1986

APPENDIX

STATUTORY PROVISIONS INVOLVED

1. 25 U.S.C. 345 provides:

Actions for allotments

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands now held by either of the

Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases.

2. 25 U.S.C. 483 provides:

Sale of land by individual Indian owners

The Secretary of the Interior, or his duly authorized representative, is authorized in his discretion, and upon application of the Indian owners, to issue patents in fee, to remove restrictions against alienation, and to approve conveyances, with respect to lands or interests in lands held by individual Indians under the provisions of sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title, or subchapter VIII of this chapter.

3. 28 U.S.C. 1353 provides:

Indian allotments

The district courts shall have original jurisdiction of any civil action involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any Act of Congress or treaty.

The judgment in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands held on or before December 21, 1911, by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency.

4. 28 U.S.C. 2401 provides:

Time for commencing action against United States

(a) Except as provided in the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

5. 28 U.S.C. 2409a provides in pertinent part:

Real property quiet title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7424, 7425, and 7426) or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

* * * * *

(f) Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

6. 28 U.S.C. 2501 provides:

Time for filing suit

Every claim of which the United States Claims Court has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

Every claim under section 1497 of this title shall be barred unless the petition thereon is filed within two years after the termination of the river and harbor improvements operations on which the claim is based.

A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.

A suit for the fees of an officer of the United States shall not be filed until his account for such fees has been finally acted upon, unless the General Accounting Office fails to act within six months after receiving the account.

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